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| ALFRED J MANGELS | | | LAUX, JESSICA L | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/724,966 | Applicant(s) BROWN, LEE J. | |
| | Examiner Jessica Laux | Art Unit 3635 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to the amendment filed 10/16/2007. Accordingly the claims have been amended, and an action on the merits is presented below.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant's remarks indicate that claim 7 has been amended to dependant from; however no such dependency has been indicated in the claim. As such the claim is indefinite and has lack of antecedent basis. For the purposes of examination the claim will be interpreted to depend from one of the independent claims 1, 14, or 15. Appropriated correction is required.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-5, 8, 10-11, 14-16, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Sasamoto (JP-2000-17797).

Claim 1: Sasamoto discloses a support bracket (FIG. 1a) comprising:

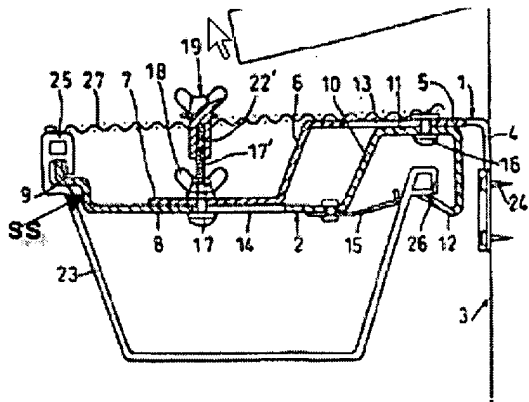
a unitary (in that it is a unitary device) substantially L-shaped body including a first leg (the portions 6, 5, 4, 10, 11, 12) that extends vertically, and a second leg (portions 7, 8, 9) that extends horizontally when installed, the first leg including a mounting surface (12) adapted to contact a rear wall of the gutter and a front surface (10) spaced from the mounting surface and connected therewith by a central panel (11) that extends in a longitudinal direction (where 11 extends in the same longitudinal direction of element 10 of the first leg) of the first leg and interconnects the mounting surface and the front surface (FIG. 1), the second leg including a support surface (shown as element ss in the annotated figure below) spaced from the mounting surface for supporting a front edge of the overlying gutter cover panel;

at least one first bore (apertures that receive fasteners 24) for securing the bracket to a building surface;

at least one second bore for receiving a cover fastener (aperture hole 14 for example, FIG. 1, 2a, are for connecting a cover panel 27 to the bracket, where hole 14 is in the front portion of the cover, thus meeting the functional limitation of the claimed bore);

engagement means (portion 9) carried by the second leg for engaging and supporting a front wall of the gutter (FIG. 1); and

upwardly-facing flat support surface means (6, 5) for engaging and supporting a rear surface portion of the gutter cover panel.



Claim 2: The Sasamoto first leg includes at least two bores spaced from each other along the first leg (two fasteners 24 are extended through two bores in portion 4; FIG. 1).

Claim 4: The Sasamoto engagement means (portion 9) is a hook member adapted to engage a reentrant lip of a gutter.

Claim 5: The Sasamoto support means (portion 6) is inclined in a downward direction from a plane defined by the mounting surface and extending toward the engagement means.

Claim 8: The Sasamoto second leg carrying a stop surface (the end of element 20, FIG 1) for abutment with and positioning relative to the bracket of a front edge of a gutter cover panel.

Claim 10: The Sasamoto body including at least one aperture (generally indicated at 16) for receiving a fastener.

Claim 11: The Sasamoto at least one aperture is positioned in the first leg (FIG 1).

Claim 14: Sasamoto discloses a support bracket (FIG. 1a; where it is noted that the support bracket of Sasamoto is capable of being used with a rain gutter that includes a cover panel having an inturned front edge) comprising:

a unitary (in that it is a unitary device) substantially L-shaped body including a first leg (the portions 6, 5, 4, 10, 11, 12) that extends vertically, and a second leg (portions 7, 8, 9) fixedly connected to the first leg, the second leg extends horizontally when installed, the first leg including a mounting surface (12) adapted to contact a rear wall of the gutter and a front surface (10) spaced from the mounting surface and connected therewith by a central panel (11) that extends in a longitudinal direction (where 11 extends in the same longitudinal direction of element 10 of the first leg) of the first leg and interconnects the mounting surface and the front surface (FIG. 1), the second leg including a support surface (shown as element ss in the annotated figure above) spaced from the mounting surface for supporting a front edge of the overlying gutter cover panel;

at least one first bore (apertures that receive fasteners 24) for securing the bracket to a building surface;

at least one second bore for receiving a cover panel fastener (aperture hole 14 for example, FIG. 1, 2a, are for connecting a cover 27 to the bracket thus meeting the functional limitation of the claimed bore);

engagement means (portion 9) carried by the second leg for engaging a front wall of the gutter (FIG. 1); and

upwardly-facing flat support surface means (6, 5) for engaging an element above the bracket.

Claim 15: Sasamoto discloses a support bracket (7, 8; FIG. 2a; where it is noted that the support bracket of Sasamoto is capable of being used with a rain gutter that includes a cover panel having an inturned front edge) comprising:

a unitary (in that it is a unitary device) substantially L-shaped body including a first leg (the portions 6, 5, 4, 10, 11, 12) that extends vertically, and a second leg (portions 7, 8, 9) that extends horizontally when installed, the first leg including a mounting surface (12) adapted to contact a rear wall of the gutter and a front surface (10) spaced from the mounting surface and connected therewith by a central panel (11) that extends in a longitudinal direction (where 11 extends in the same longitudinal direction of element 10 of the first leg) of the first leg and interconnects the mounting surface and the front surface (FIG. 1), the second leg including a support surface (shown as element ss in the annotated figure above) spaced from the mounting surface for supporting a front edge of the overlying gutter cover panel);

at least one first bore (apertures that receive fasteners 24) for securing the bracket to a building surface;

engagement means (the upward vertical portion of 9) carried by the second leg for engaging a front wall of the gutter (FIG. 1);

a contact surface (the horizontal portion of 9) carried by the second leg between the first leg and the engagement means capable of contact with an inturned edge of a cover panel; and

upwardly-facing, flat support surface means (6, 5) for engaging and supporting an element above the bracket.

Claim 16: The Sasamoto bracket includes at least one second bore for receiving a cover fastener (aperture hole 14 for example, FIG. 1, 2a, are for connecting a cover 27 to the bracket, where the hole 14 is in the front portion of the cover, thus meeting the functional limitation of the claimed bore).

Claim 18: The Sasamoto contact surface includes stop (horizontal portion 9 provides a stop of element 25).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 6-7, 12-13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sasamoto (JP-2000-17797).

Claims 3 and 17: Sasamoto discloses a support bracket (FIG. 1a) in accordance with claims 1, 14, 15 above, but does not expressly disclose that the second bore is a blind bore. Instead, Sasamoto discloses a through-bore. However, the bore is still a bore for receiving a cover fastener. Applicant has not disclosed that having blind bore instead of a through-bore solves any stated problem or is for any particular purpose. Moreover, it appears that the through-bore of Sasamoto, or the blind bore of applicant's invention, would perform equally well with the.

Accordingly, it would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to have modified Sasamoto such that the bore was a blind bore because such a modification would have been considered a mere design consideration which fails to patentably distinguish over Sasamoto.

Claims 6 and 7: Sasamoto is silent as to the particular inclination angle of the support means (portion 6, 10). However, it is well settled that the particular size or shape of an element is a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed element was significant. In the present case, the claimed inclination angle or range is a matter of design choice depending on the particular shape of the gutter cover and sloping an element away from the building was known to one of ordinary skill in the art in order to utilize gravity to better direct rainwater and debris away from the fascia board. Applicant has provided no persuasive evidence that the particular inclination angle was significant. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the angle of 90 degrees to be 60-85 degrees, or 75 degrees, in order to slope away from the building and utilize gravity to better direct rainwater and debris away from the fascia board

Claims 12-13: Sasamoto discloses the bracket as in the claims above, wherein the at least one aperture is positioned in the first leg, but does expressly disclose that the at least one aperture is positioned in the second leg or in the first and second leg.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to position the aperture in the second or the first and second leg because applicant has not disclosed that the claimed locations provide an advantage, are used for a particular purpose, or solve a stated problem. Applicant does disclose that having the aperture positioned in the first leg is an acceptable embodiment of the invention. One of ordinary skill in the art, furthermore, would have expected Sasamoto's bracket, and applicant's invention to perform equally well with either the position taught by Sasamoto, and disclosed by applicant or the claimed position in the second or in the first and second legs, because either position would perform the same function of receiving a fastener equally well considering.

Therefore, it would have been prima facie obvious to modify Sasamoto to obtain the invention as specified in claims because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Sasamoto.

Allowable Subject Matter

Claim 9 allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica Laux whose telephone number is 571-272-8228. The examiner can normally be reached on Monday thru Thursday, 9:00am to 5:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/JEANETTE CHAPMAN/
PRIMARY EXAMINER

JL
01/02/2008